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(2) The revenue described in paragraph (b)(1) of this section equals or exceeds the maximum payment amount under section 8002(b) for the fiscal year for which the LEA seeks assistance.

(c) If an LEA described in paragraph (a) of this section received revenue described in paragraph (b)(1) of this section during the preceding fiscal year that is less than the maximum payment amount calculated under section 8002(b)(2) for the fiscal year for which the LEA seeks assistance, the Secretary reduces that maximum payment amount by the amount of that revenue received by the LEA.

(d) For purposes of this section, the amount of revenue that an LEA receives during the previous fiscal year from activities conducted on Federal property does not include the following:

(1) Payments received by the agency from the Secretary of Defense to support—

(i) The operation of a domestic dependent elementary or secondary school; or

(ii) The provision of a free public education to dependents of members of the Armed Forces residing on or near a military installation.

(2) Federal payments-in-lieu-of-taxes (PILOTs or PILTs), including PILTs for Federal entitlement lands authorized by Public Law 97–258, 31 U.S.C. 6901–6906.

(Authority: 20 U.S.C. 7702(a)(2) and (b)(1)(A))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35414, July 1, 1997]

§ 222.23 How does a local educational agency determine the aggregate assessed value of its eligible Federal property for its section 8002 payment?

(a) *General.* A local educational agency (LEA) determines the aggregate assessed value of its eligible Federal property for its section 8002 payment as follows:

(1) A local official who is responsible for assessing the value of real property located in the jurisdiction of the LEA in order to levy a property tax makes the determination of the section 8002 aggregate assessed value, based on estimated assessed values (EAVs) for the

eligible Federal property in the jurisdiction.

(2) The local official first categorizes the types of expected uses of the eligible Federal property in each Federal installation or area (*e.g.*, Federal forest) based on the highest and best uses of taxable properties adjacent to the eligible Federal property (adjacent properties), and allocates a portion of the acres of the eligible Federal property to each of those expected uses, in accordance with paragraph (b) of this section.

(3) For each category of expected use of the eligible Federal property identified in accordance with paragraph (a)(2) of this section for each Federal installation or area, the local official then determines a base value in accordance with paragraphs (c) and (d) of this section.

(4) The local official next determines a section 8002 EAV for each category of expected use of the eligible Federal property in each Federal installation or area. The official determines that EAV by adjusting the base value for that category established in accordance with paragraph (a)(3) of this section, by any percentage, ratio, index, or other factor that the official would use to determine the assessed value (as defined in § 222.20) of the eligible Federal property to generate local real property tax revenues for current expenditures if that eligible Federal property were taxable. (This process is illustrated in Example 8 and Table 8–2 at the end of this section.)

(5) The local official then determines a total section 8002 EAV for each Federal installation or area in the LEA by adding together the assessed values determined pursuant to paragraph (a)(4) of this section for all property use categories of eligible Federal property in that Federal installation or area.

(6) The local official determines a section 8002 aggregate assessed value for the LEA as follows:

(i) If the LEA contains a single Federal installation or area with eligible Federal property, the total section 8002 EAV determined pursuant to paragraph (a)(5) of this section constitutes the section 8002 aggregate assessed value for the LEA.

(ii) If the LEA contains more than one Federal installation or area with eligible Federal property, the local official calculates the section 8002 aggregate assessed value for all of the eligible Federal property in the LEA by adding together the section 8002 total EAVs determined pursuant to paragraph (a)(5) of this section for all Federal installations and areas containing eligible Federal property within the LEA. (This process is illustrated in Example 8 and Table 8-2 at the end of this section.)

(b) *Categorizing expected uses.* (1) The local official categorizes the expected uses of the eligible Federal property, in accordance with paragraph (a)(2) of this section, by—

(i) Identifying the tax assessment classifications that represent the highest and best uses of the taxable adjacent property (*e.g.*, residential, commercial, agricultural); and

(ii) Determining the relative proportions of taxable adjacent properties, based on acreage, that are devoted to each of those tax assessment classifications that represent the highest and best uses of the taxable adjacent property (*e.g.*, agricultural—50 percent; residential—40 percent; commercial—10 percent).

(2) The local official then determines the allocation of each of those expected uses to the eligible Federal property acres by multiplying each of the proportions determined under paragraph (b)(1)(ii) of this section by the total acres of the eligible Federal property in that Federal installation or area.

(c) *Determining the base value for expected use categories.* The local official determines a base value for each category of expected use of the eligible Federal property in accordance with paragraph (a)(3) of this section as follows:

(1) The local official first identifies the taxable-use portion of the eligible

Federal property acres in each expected use category as follows:

(i) The local official allocates a proportion (percentage) of the eligible Federal property acres identified for each expected use category under paragraph (b)(2) of this section to expected non-assessed or tax-exempt uses, such as public open space, schools, churches, and roads. The local official bases these proportions on the actual non-assessed or tax-exempt uses for each category of taxable property in the entire tax jurisdiction(s) where the selected taxable adjacent properties are located.

(ii) The local official then determines the number of acres attributable to non-assessed or tax-exempt uses for each expected use category by multiplying the non-assessed or tax-exempt proportions identified in paragraph (c)(1)(i) of this section by the number of acres in each expected-use category determined pursuant to paragraph (b)(2) of this section.

Example 1 (Allocation of Proportion of Eligible Federal Property to Non-Assessed or Tax-exempt Uses): The eligible Federal property (1,000 acres) is surrounded by properties that are classified for tax purposes according to their highest and best uses as residential (40 percent) and agricultural (60 percent) property. For the residential category (400 acres), the local official determines that approximately 20 percent would be devoted to non-assessed or tax-exempt uses, such as roads, parks, churches, and schools. The local official multiplies that proportion (.20) by the number of eligible Federal acres allocated to the residential category (400 acres) to determine the number of eligible Federal acres (80 acres) that likely would not be assessed for taxation or would be tax-exempt if the Federal Government no longer owned that property, as illustrated in the chart at the end of this example (Table 1-1). The local official follows a similar process for the proportion of the eligible Federal property the official allocated to agricultural use.

TABLE 1–1—PROPORTION OF RESIDENTIAL CATEGORY OF SECTION 8002 ELIGIBLE FEDERAL PROPERTY ALLOCATED TO NON-ASSESSED OR TAX-EXEMPT USES

(1)	Allocated proportion (percent)	Eligible Federal acres allocated to expected use category (Col. 2 × acres in expected use category)
(1)	(2)	(3)
Residential portion of eligible Federal property (400 acres)		
Allocated by local official for non-assessed or tax-exempt uses	20	80
Allocated for taxable residential use	80	320
Total	100	400

(iii) The local official then calculates the number of acres attributable to taxable use for each expected use category by subtracting the number of acres attributable to non-assessed or tax-exempt uses determined under paragraph (c)(1)(ii) of this section from the total number of acres of eligible Federal property in that use category identified in paragraph (b)(2) of this section.

(2) For the taxable use portion determined under paragraph (c)(1)(iii) of this section for each expected use category, the local official then calculates a base value as follows:

(i) The local official selects from each expected use category identified pursuant to paragraph (b)(1)(i) of this section a minimum sample size of 10 taxable adjacent properties that represent the highest and best uses of the taxable adjacent properties. The official identifies the value that is recorded on the assessment records for each selected taxable adjacent property before any adjustment, ratio, percentage, or other factor is applied to establish a taxable (assessed) value. If at least three but fewer than 10 taxable adjacent properties are selected in an identified use category, the local official calculates a per acre value for each adjacent property and then identifies which of those properties has the lowest per-acre value. The official replicates that adjacent property's value and acreage as many times as needed until the combination of actual and replicated adjacent properties reaches ten in number. In extremely rare circumstances, the Secretary may permit the local official to select fewer than

three parcels in a tax classification if doing so is determined by the Secretary to be necessary and reasonable and there is an insufficient number of adjacent taxable properties to replicate. In those extremely rare circumstances, the local official establishes the base value of the eligible Federal property using the average per acre value of the selected adjacent property or properties.

Example 2a (Minimum Sample Size of Adjacent Properties): The eligible Federal property is surrounded by properties that are classified for tax purposes as residential, commercial, and agricultural property. The local official selects at least 10 taxable adjacent parcels from each of the residential and agricultural property classifications as the basis for valuing the eligible Federal property.

In the commercial classification, however, only six taxable adjacent properties are selected. The lowest per-acre-valued parcel, Parcel A, is valued at \$6,000 per acre. As illustrated in Table 2-1, the local official selects all six of the commercial taxable adjacent properties, and then replicates Parcel A's value and acreage four more times to reach the minimum number of ten properties for that classification.

Example 2b (Use of Fewer Than Three Adjacent Taxable Properties in Extremely Rare Circumstances): There are three golf courses in an LEA, one on eligible Federal property and the other two on taxable property adjacent to the eligible Federal property. Under the local tax classification scheme, there is a separate tax category for golf courses. Since there are only two adjacent taxable properties in that tax classification in the taxing jurisdiction, the LEA seeks permission to establish the base value for the golf course on the eligible Federal property using the average per-acre value of the two adjacent taxable golf courses. After verifying the facts, the Secretary determines that extremely rare circumstances exist within the meaning

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of § 222.23(c)(2)(i) and grants the LEA's request.

(ii) The local official then calculates an average per-acre value for the taxable portion of each expected use category by totaling the values (following application of any adjustment factors,

if relevant) and acres of the actual and any replicated adjacent properties and then dividing the total value by the total number of acres in those properties, as illustrated in the following chart (Table 2-1).

TABLE 2-1—AVERAGE PER-ACRE VALUE OF MINIMUM SAMPLE SIZE OF ADJACENT PROPERTIES

	Selected adjacent properties—commercial classification	Value	Acres	Value per acre
	(1)	(2)	(3)	(4)
1	Parcel A	\$150,000	25	\$6,000
2	Parcel B	1,200,000	30	40,000
3	Parcel C	750,000	.25	3,000,000
4	Parcel D	1,000,000	40	25,000
5	Parcel E	500,000	5	100,000
6	Parcel F	250,000	.5	500,000
7	Replicated Parcel A	150,000	25	6,000
8	Replicated Parcel A	150,000	25	6,000
9	Replicated Parcel A	150,000	25	6,000
10	Replicated Parcel A	150,000	25	6,000
	Total	4,450,000	200.75	NA
	Average value/acre (TOTAL Col. 2/TOTAL Col. 3)			22,166.87

(iii) The local official then multiplies the average per-acre value calculated under paragraph (c)(2)(ii) of this section by the number of acres of eligible Federal property in the taxable portion of that expected-use category, determined in accordance with paragraph (b)(2) of this section to calculate the base value for that category.

(d) *Additional procedures for determining base values.* The local official applies the following additional procedures in determining a base value for each category of expected use of the eligible Federal property, in accordance with paragraph (a)(3) of this section:

(1) The local official determines base values on a three-year cycle, as follows:

(i) The local official allocates expected uses to the eligible Federal property in accordance with paragraph (b)(2) of this section and selects taxable adjacent properties in accordance with paragraph (c)(2)(i) of this section once every three years (base year).

(ii) For each of the following two application years, the local official uses the same allocation of expected uses of the eligible Federal property and the same taxable adjacent parcels selected for the base year, but updates the val-

ues and acreages of the selected taxable adjacent parcels.

(iii) If a previously selected taxable adjacent property becomes unsuitable for determining the base value for the expected-use category because that property has changed assessment classification, become tax-exempt, or undergone a change in character from the time that the property was selected for the base year, the local official substitutes a similar taxable adjacent property from the same expected-use category (assessment classification) in accordance with the requirements in paragraph (c)(2)(i) of this section.

Example 3 (Three-Year Cycle for Selected Adjacent Properties): For the fiscal year (FY) 2010 section 8002 application, the local official selects 15 residential taxable adjacent properties to use as the basis for valuing a portion of the eligible Federal property, and provides the value and acreages of each of those properties for the previous year (2009). The local official must use those same properties for the following two application years (2011 and 2012), assuming that those properties retain the same assessment classification, remain taxable, and do not undergo a change in the original character upon which their selection was based. For each of those following two years, the local official updates the values and acreages of each selected residential taxable adjacent property

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based on the preceding year's tax data (2010 and 2011, respectively).

However, during that two-year period, one of the residential taxable adjacent properties changes in character because the residential improvement is destroyed. That change to the original character makes the property unsuitable to include in the selected group of residential taxable adjacent properties for the remaining two years of the three-year period. Accordingly, the local official substitutes a residential taxable adjacent property that is similar to the originally selected property (*i.e.*, an improved residential adja-

cent property of similar value and size) to retain the same number and variety of taxable adjacent properties in that expected-use category as originally selected.

(2)(i) When selecting taxable adjacent properties for the base year in accordance with paragraph (c)(2)(i) of this section, the local official may include taxable adjacent properties that are recent sales (as defined in paragraph (e)(3) of this section), among other taxable adjacent properties, up to the following proportion:

$$\frac{\text{number of recent sales in the tax jurisdiction(s) in each expected use category for the three most recent years for which data are available}}{\text{total number of taxable properties in the tax jurisdiction(s) in the expected use category for the most recent year for which data are available}}$$

Example 4 (Proportion of Recent Sales in Assessment Classification): Beginning with the most recent year for which data are available (2007), the local official determines that 40 taxable agricultural properties sold or otherwise transferred ownership in that tax jurisdiction during the three most recent years for which data are available (2005 through 2007) and that there were 500 taxable

agricultural properties during 2007 (the most recent year for which data are available). (If a particular property sold more than once during the three most recent years for which data are available, the local official counts each sale.) The local official determines the proportion of sales for taxable agricultural property as follows:

$$\frac{\text{number of agricultural sales in last three years for which data are available (40)}}{\text{total number of agricultural properties in most recent year for which data are available (500)}} = \text{proportion of recent sales (.08 or 8 percent)}$$

(ii) The local official determines the number of recent sales the official may include with other selected taxable ad-

jacent properties for that expected use category as follows:

$$\text{proportion (percentage) of recent sales for the expected use category (calculated under paragraph (d)(2)(i) of this section)} \times \text{total number of taxable adjacent properties selected for that expected use category}$$

If the resulting number is a fraction, the local official rounds down to the next smaller whole number to determine the maximum number of recent sales that the official may include for that expected use category.

Example 5 (Number of Recent Sales Local Official May Use To Determine the Base Value for Each Expected Use Category of Eligible Federal Property): The eligible section 8002 Federal property in the LEA is a federally owned forest. Based on the highest and best uses of taxable adjacent properties, three expected use categories (assessment classifications) of properties surround that forest: Residential, commercial, and agricultural. After identifying and excluding a non-assessed or tax-exempt proportion for each expected use category of the eligible Federal property, in accordance with paragraphs (a)(3) and (c)(1) of this section, the local official selects 10 taxable adjacent properties each for the residential and commercial use categories, and 20 taxable adjacent properties for the agricultural use category to determine the base value for the taxable portion of each expected use category of the eligible Federal property.

During the three most recent years for which data are available, 10 percent of the

residential properties in the tax jurisdiction were sold, six percent of the commercial properties were sold, and eight percent of the agricultural properties were sold. As illustrated in the following chart, of the 10 residential adjacent properties selected, the local official may select only one recent sale (10 percent (.10) \times 10 residential adjacent properties = one) to use in determining the base value for that expected use category of the eligible Federal property.

For the commercial classification, six percent of the taxable properties in the tax jurisdiction were recent sales. As illustrated in the following chart, the local official may not select any recent sales for that expected-use category because six percent (.06) of the 10 selected commercial adjacent properties is less than one whole number, and rounding down therefore results in 0 (six percent (.06) \times 10 commercial adjacent properties = .6 of a property).

Finally, as illustrated in the following chart, for the 20 selected agricultural adjacent properties, the local official may use one recent sale for that expected-use category, because eight percent (.08) of the 20 properties equals 1.6 properties (eight percent (.08) \times 20 agricultural adjacent properties = 1.6) and rounding down to the nearest whole number results in one property.

TABLE 5-1—NUMBER OF RECENT SALES LOCAL OFFICIAL MAY USE TO DETERMINE THE BASE VALUE FOR EACH EXPECTED USE CATEGORY OF ELIGIBLE FEDERAL PROPERTY

	Residential	Commercial	Agricultural
1. Percent (proportion) of recent sales for expected use category	10% (.10)	6% (.06)	8% (.08)
2. Total selected adjacent properties	10	10	20
3. Row 1 \times Row 2	1.0	.6	1.6
4. Number of "recent sales" local official may include among other taxable adjacent properties in determining a base value for the expected use category of the eligible Federal property	1	0	1

(e) *Definitions.* The following terms used in this section are defined as follows:

(1) *Adjacent* means next to or close to the eligible Federal property as follows:

(i) In most cases, the term *adjacent* means the closest taxable parcels within the LEA.

(ii) The term *adjacent* means properties farther away from the eligible Federal property than described in paragraph (e)(1)(i) of this section only if the Secretary determines that it is necessary and reasonable to use those more distant properties to determine the EAV of eligible Federal property.

(iii) The Secretary considers the term *adjacent* to mean properties far-

ther than two miles from the perimeter of the eligible Federal property or outside the LEA only in extremely rare circumstances determined by the Secretary.

Example 6 (Extremely Rare Circumstances): A very small LEA consists predominantly of non-taxable and tax-exempt property including eligible Federal property. The small taxable portion of the LEA is topographically dissimilar from the Federal property and classified for tax purposes differently than the eligible Federal property most likely would be if it were on the tax rolls, in the opinion of the local official. Based on these facts, the LEA asserts that there are no suitable adjacent taxable properties and requests permission to use taxable properties in the adjoining LEA. After verifying the facts, the Secretary determines that extremely rare circumstances exist within the meaning of

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§ 222.23(e)(1)(iii) and grants the LEA's request.

In an LEA bordering on the Pacific Ocean, the entire coastline is taken up by the eligible Federal property. Based on the absence of taxable oceanfront property in the LEA, the LEA seeks permission to use taxable oceanfront property in the adjoining LEA. After verifying the facts, the Secretary determines that extremely rare circumstances exist within the meaning of § 222.23(e)(1)(iii) and grants the LEA's request.

(2)(i) *Highest and best use* of adjacent property is determined based on a highest and best use standard in accordance with State or local law or guidelines of general applicability, if available, that is not used exclusively for the eligible Federal property and includes any improvements on that property to the extent consistent with those laws or guidelines. To the extent that State or local law or guidelines of general applicability are not available, highest and best use generally must be based on the current use of the taxable adjacent property (including any improvements).

(ii) In determining the highest and best use, the local official—

(A) Also may consider the most developed and profitable use for which the taxable adjacent property is physically adaptable, but only if that use is legally permissible and financially feasible, and for which there is a need or demand in the near future;

(B) May not base the highest and best use of taxable adjacent property on potential uses that are speculative or remote; and

(C) Must consider the extent to which the eligible Federal property is physically adaptable for those expected uses and the extent to which those uses would be needed if the property were not in Federal ownership.

Example 7 (Determining the Highest and Best Use of Taxable Adjacent Properties as the Basis for EAV): If a Federal installation to be valued is bordered by residential and commercial/industrial properties, the local official takes into consideration those various highest and best uses (residential and commercial/industrial) in determining the EAV of the eligible Federal property as described in paragraphs (a) and (c)(2)(i) of this section.

Under that process, using acres, the local official first determines the relative proportions of adjacent properties devoted to each of those highest and best uses. For example, the local official determines that the highest and best uses of the adjacent properties are residential (60 percent) and commercial/industrial (40 percent). However, before allocating the acres of the eligible Federal property (1,000 acres) to those uses as described in paragraphs (a)(2) and (b) of this section, the local official must consider whether the Federal property is adaptable for and there is a need for those uses, in accordance with paragraph (e)(2)(ii)(B) of this section.

For example, if the Federal property is hilly and rocky or contains a large area of marshland, it may not be practical for the property to be developed primarily as residential property. Using his or her professional judgment, the local official may decide that it would be more appropriate to designate 50 percent of the acres as vacant or woodland or some other taxable classification that would indicate that improvements would likely not be located on that property. This may also affect the proportion of the property that would be designated as commercial/industrial because some of those commercial/industrial uses would support the area designated for residential use. Thus, the local official designates the remaining 50 percent of the acres as 20 percent residential and 30 percent commercial/industrial.

After the local official determines the appropriate proportions of expected uses, the official then multiplies those proportions by the total number of eligible Federal acres (1,000) to determine the number of eligible Federal acres in each expected use category, resulting in the following: residential (20 percent or 200 acres), vacant (50 percent or 500 acres), and commercial/industrial (30 percent or 300 acres). The local official then determines the base value for the taxable use portion of each expected use category under paragraph (c)(2) of this section, beginning by selecting a sample of properties that represents the highest and best uses of the taxable adjacent properties.

In selecting the sample, the local official must consider whether the Federal property would support the same degree of development as the taxable adjacent properties selected (e.g., density, size, and improvements) and whether there would be a need for that type and degree of development in the near future. The local official then makes any necessary adjustments to the sample.

(3) *Recent sales or recently sold* means taxable properties that have transferred ownership within the three most recent years for which data are available.

Example 8 (Calculation of Section 8002 EAV for Eligible Federal Property): Two different Federal properties are located within an LEA—a Federal forest (100 eligible acres) and a naval facility (1,000 eligible acres). Based on the highest and best uses of taxable adjacent properties, and as described more specifically below, the local official establishes an EAV for the eligible Federal property in the LEA of \$92,577,000 in the base year of a three-year cycle. That EAV is based on categorizing the Federal forest as 100 percent (100 acres) woodland expected use and the naval facility as 60 percent (600 acres) residential expected use and 40 percent (400 acres) commercial/industrial expected use.

The taxing jurisdiction determines the assessed value for taxable property by multiplying the value of the property by a single

assessment ratio applicable to the property's assessment category. In this case, the applicable assessment ratios are: Woodland property—30 percent of the property's value; residential property—60 percent of the property's value; and commercial/industrial property—75 percent of the property's value.

Federal forest (100 eligible Federal acres). The local official first determines the type of expected-use categories (assessment classifications) and respective proportions to use in valuing the eligible Federal property, based on the highest and best use of the taxable adjacent properties. In this case, the local official categorizes 100 percent of the Federal forest as being in the woodland use category (assessment classification) based on the highest and best use of taxable adjacent properties. The local official multiplies that proportion by the total number of eligible Federal acres (100), to determine the number of Federal acres attributable to the woodland use category (100 acres).

The local official then determines a base value for each category of expected use of the eligible Federal property as described in paragraphs (a)(3), (c), and (d) of this section. The official first determines the taxable-use portion for each expected use category, as described in paragraph (c)(1) of this section, by excluding the proportion of the total area of each use category of the eligible Federal property that the official determines should be allocated to non-assessed or tax-exempt uses.

Based on the general proportion of non-assessed or tax-exempt uses for woodland property, the local official allocates 10 percent of the woodland acres for non-assessed or tax-exempt purposes, and multiplies that proportion by the total number of acres of eligible Federal property categorized as woodland (100 acres), resulting in 10 acres attributable to a non-assessed or tax-exempt proportion of woodland. The local official then subtracts that non-assessed or tax-exempt portion (10 acres) from the total acres of eligible Federal property in that expected-use category (100 acres), resulting in 90 acres attributable to the taxable portion of the woodland expected-use category.

The local official then selects a sample of taxable adjacent properties from the expected use category (woodland), as described in paragraphs (c)(2) and (d) of this section, and uses that sample to establish a base value for that category. The sample includes the minimum required number of taxable adjacent properties (generally at least 10) from the woodland category. In addition, in selecting that sample of properties, the local official uses only the allowable proportion of recent sales, calculated as described in paragraph (d)(2) of this section. In selecting the specific taxable adjacent properties that make up that sample and that reflect the highest and best uses of the adjacent taxable

properties in accordance with paragraph (c)(2)(i) of this section, the local official also considers whether the Federal property is adaptable for and whether there would be a need for those specific types of properties, such as in size and improvements, in accordance with paragraph (e)(2)(ii)(B) of this section.

The local official calculates the average value per acre (\$1,000) of the selected sample of taxable adjacent woodland properties. The local official then multiplies the number of acres attributable to the taxable portion of the woodland expected use category (90 acres) by the average value per acre (\$1,000) of the selected taxable woodland adjacent properties, resulting in a base value for the woodland use category of the Federal forest of \$90,000.

The local official then determines the section 8002 EAV for the Federal forest as described in paragraph (a)(4) of this section by multiplying the base value established for the woodland portion of the property (\$90,000) by 30 percent (the assessment ratio for woodland property), resulting in a section 8002 EAV of \$27,000 for the Federal forest.

Naval facility (1,000 total eligible Federal acres).

The local official first determines the type of expected-use categories (assessment classifications) and respective proportions to use in valuing the eligible Federal property. For the naval facility, the local official determines that the relative mix of taxable adjacent properties, based on their highest and best uses, is 60 percent residential and 40 percent commercial/industrial. The local official multiplies those proportions by the total eligible Federal acres in the naval facility (1,000), resulting in 600 acres (60 percent \times 1,000 acres = 600 acres) to be valued as residential expected use and 400 acres (40 percent \times 1,000 acres = 400 acres) to be valued as commercial/industrial expected use.

The local official then determines a base value for each of those expected use categories of the eligible Federal property. For the residential expected-use category, the local official allocates 20 percent for non-assessed or tax-exempt uses, and multiplies that proportion by the number of eligible Federal acres allocated to that expected-use category (600 acres), resulting in 120 acres allocated to non-assessed or tax-exempt uses. The local official excludes those 120 acres by subtracting them from the total number of residential acres (600 acres), resulting in 480 acres allocated to taxable residential uses for the residential portion of the eligible Federal property in the naval facility.

For the commercial/industrial expected-use category, the local official allocates 15 percent for non-assessed or tax-exempt uses, and multiplies that proportion by the number of eligible Federal acres allocated to that

expected-use category (400 acres), resulting in 60 acres allocated to non-assessed or tax-exempt uses. The local official excludes those 60 acres by subtracting them from the total number of commercial/industrial acres (400 acres), resulting in 340 acres allocated to taxable commercial/industrial uses for the commercial/industrial portion of the eligible Federal property in the naval facility.

The local official then selects a sample of taxable adjacent properties from each identified use category, as described in paragraphs (c)(2) and (d) of this section, which the official uses to establish a base value for each of those expected-use categories. That sample includes the minimum required number of taxable adjacent properties (generally at least 10) for each expected use category. In addition, in selecting the sample of properties, the official uses only the allowable proportion of recent sales, calculated as described in paragraph (d)(2) of this section.

In considering whether the specific group of taxable adjacent properties selected reflects the highest and best uses of the adjacent taxable properties in accordance with paragraph (c)(2)(i) of this section, the local official also considers whether the Federal property is adaptable for and whether there would be a need for those specific types of properties, in accordance with paragraph (e)(2)(ii)(B) of this section.

For example, if the official selects 10 residential parcels that are all small, such as one quarter (.25) of an acre or less, and uses those parcels to determine an EAV for a large area of Federal property, the result may exaggerate what would likely happen to that property if it were available for development. If the official uses only these small parcels (e.g., .25 acres each) for the 480 acres allocated to taxable residential uses for the residential portion of the eligible Federal property, the official would be projecting that approximately 1,920 small residential lots would be developed on that Federal property ($.25 \times 480 = 1,920$) if the property were no longer in Federal ownership. The Department believes that it would be extremely unlikely that 480 acres of the property would develop into this number of residential properties. This outcome would not reflect the local official's best judgment of the reasonable development of the property. To avoid this inappropriate result, the official would identify other taxable adjacent parcels of varying sizes to provide a more accurate picture of how the Federal property would be developed if it were on the tax rolls.

Similarly, with respect to improvements, if the local official selected taxable adjacent properties that all were improved parcels, the official would be projecting that all of the 480 acres allocated to taxable residential uses for the residential portion of the eligible Federal property would be improved. If the residential taxable adjacent parcels are a

mixture of improved and unimproved properties, that projection also may be speculative based on the number of improvements that reasonably would be needed for the current and any expected new population. If the assumption is not reasonable that the entire 480 acres would be improved, then the local official would make adjustments accordingly in the sample of taxable adjacent properties by adding some unimproved residential parcels to the sample.

For the portion of the naval facility allocated to taxable residential use, the local official calculates the average per-acre value (\$100,000) of the selected sample of residential adjacent properties as described in paragraph (c)(2)(ii) of this section. The local official then multiplies the number of acres allocated to the taxable residential portion (480 acres) by the average value per acre (\$100,000) of the sample of residential adjacent properties to determine the base value (\$48,000,000) for that portion of the eligible Federal property, as described in paragraph (c)(2)(iii) of this section. The local official determines a section 8002 EAV for that residential portion by multiplying the \$48 million by 60 percent (assessment ratio for residential property), resulting in \$28,800,000 as described in paragraph (a)(4) of this section.

Similarly, for the portion of the naval facility allocated to taxable commercial/industrial use, the local official calculates an aggregate per acre value (\$250,000) of the selected sample of commercial/industrial taxable adjacent properties as described in paragraph (c)(2)(ii) of this section. The local official then multiplies the number of eligible Federal property acres allocated to the taxable commercial/industrial portion (340 acres) by the average value per acre of the selected commercial/industrial adjacent properties (\$250,000) to determine the base value for that portion of the eligible Federal property (\$85,000,000), as described in paragraph (c)(2)(iii) of this section. The local official determines a section 8002 EAV for that commercial/industrial portion by multiplying the \$85,000,000 by 75 percent (the assessment ratio for commercial/industrial property), resulting in \$63,750,000 as described in paragraph (a)(4) of this section.

The local official then calculates the total section 8002 EAV for the entire naval facility as described in paragraph (a)(5) of this section by adding the figures for the residential portion (\$28,800,000) and the commercial/industrial portion (\$63,750,000), resulting in a total section 8002 EAV for the entire naval facility of \$92,550,000.

Total section 8002 property in the LEA. Finally, the local official determines the aggregate section 8002 assessed value for the LEA as described in paragraph (a)(6) of this section by adding the section 8002 EAV for the Federal forest (\$27,000), and the total section 8002 EAV for the naval facility

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(\$92,550,000), resulting in an aggregate assessed value of \$92,577,000. This entire process is illustrated in Tables 8-1 and 8-2 below:

TABLE 8-1—ALLOCATION OF SECTION 8002 ELIGIBLE FEDERAL PROPERTY TO NON-TAXABLE AND TAXABLE USES FOR DETERMINING BASE VALUES

Tax classifications of adjacent properties based on highest and best use	Proportion of eligible Federal property allocated to property use categories (percent)	Total acres allocated to property use categories (Col. 2 × eligible acres)	Proportion allocated to non-assessed or tax-exempt uses (percent)	Acres allocated to non-assessed or tax-exempt uses (Col. 4 × Col. 3)	Acres allocated to taxable uses and used to determine base values (Col. 3 – Col. 5)
(1)	(2)	(3)	(4)	(5)	(6)
Federal Forest (100 eligible acres)					
Woodland	100	100	10	10	90
Subtotal		100		10	90
Naval Facility (1,000 eligible acres)					
Residential	60	600	20	120	480
Commercial/Industrial	40	400	15	60	340
Subtotal	100	1,000		180	820
Total		1,100		190	910

TABLE 8-2—CALCULATION OF SECTION 8002 BASE VALUES, SECTION 8002 ESTIMATED ASSESSED VALUES (EAVS), AND AGGREGATE ASSESSED VALUE

Classification of adjacent parcels	Federal acres allocated for taxable use (Table 7-1, Col. 6)	Average value/acre of taxable adjacent parcels	Base value of eligible Federal property (Col. 3 × Col. 4)	Assessment ratio (percent)	Section 8002 EAVs and aggregate assessed value
(1)	(2)	(3)	(4)	(5)	(6)
Federal Forest (90 eligible acres allocated for <i>taxable</i> use (see Table 7-1, column 6))					
Woodland	90	\$1,000	\$90,000	30	\$27,000
Subtotal	90		90,000	27,000	
Naval Facility (820 eligible Federal acres allocated for <i>taxable</i> use (see Table 6-1, column 6))					
Residential	480	100,000	48,000,000	60	28,800,000
Commercial/Industrial	340	250,000	85,000,000	75	63,750,000
Subtotal	820		133,000,000		92,550,000
Total (Aggregate Assessed Value)			133,090,000		92,577,000

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(Authority: 20 U.S.C. 7702)

[73 FR 70575, Nov. 20, 2008]

EFFECTIVE DATE NOTE: At 73 FR 70575, Nov. 20, 2008, § 222.23 was revised. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§§ 222.24–222.29 [Reserved]

Subpart C—Payments for Federally Connected Children Under Section 8003(b) and (e) of the Act

§ 222.30 What is “free public education”?

In addition to the terms defined in § 222.2, the following definition applies to this part:

Free public education. (1) The term means education that is provided—

- (i) At public expense;
- (ii)(A) As the complete elementary or secondary educational program as determined under State law through grade 12; and
- (B) Preschool education, whether or not included as elementary education by State law;
- (iii) In a school of the local educational agency (LEA) or under a tuition arrangement with another LEA or other educational entity; and
- (iv) Under public supervision and direction, except with respect to children with disabilities.

(2) For the purpose of paragraph (1)(i) of this definition, education is provided at public expense if—

- (i) There is no tuition charge to the child or the child’s parents; and
- (ii) Federal funds, other than funds under the Act, do not provide a substantial portion of the educational program.

(3) For the purpose of paragraph (1)(ii) of this definition, the complete elementary or secondary educational program is the program recognized by the State as meeting all requirements for elementary or secondary education for the children claimed and, except for preschool education, does not include a program that provides only—

- (i) Supplementary services or instruction; or

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(ii) A portion of the required educational program.

(4) For the purpose of paragraph (1)(iii) of this definition, a tuition arrangement must—

- (i) Satisfy all applicable legal requirements in the State; and
- (ii) Genuinely reflect the applicant LEA’s responsibility to provide a free public education to the children claimed under section 8003.

(5) For the purpose of paragraph (1)(iv) of this definition, education provided under public supervision and direction means education that is provided—

- (i) In a school of the applicant LEA or another LEA; or
- (ii) By another educational entity, over which the applicant LEA, or other public agency, exercises authority with respect to the significant aspects of the educational program for the children claimed. The Secretary considers significant aspects of the educational program to include administrative decisions relating to teachers, instruction, and curriculum.

(Authority: 20 U.S.C. 7703, 7709, 7713(6))

§ 222.31 To which local educational agencies does the Secretary make basic support payments under section 8003(b) of the Act?

The Secretary makes payments to an LEA with an otherwise approvable application for children claimed under section 8003(b) of the Act if—

- (a) The LEA meets the requirements in subpart A of these regulations and this subpart; and
- (b)(1) The LEA is responsible under applicable State or Federal law for providing a free public education to those children;

(2) The LEA is providing a free public education to those children; and

(3) The State provides funds for the education of those children on the same basis as all other public school children in the State, unless permitted otherwise under section 8009 of the Act.

(Authority: 20 U.S.C. 7703 and 7709)

§ 222.32 Upon what information is a local educational agency’s basic support payment based?

- (a) The Secretary determines an LEA’s payment under section 8003(b)